



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

November 30, 2018

*Via electronic mail*  
Ms. Deborah Wilson  
[REDACTED]

*Via electronic mail*  
The Honorable Patrick Horcher  
President, Board of Trustees  
Village of Wheeling  
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Wheeling, Illinois 60090  
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*Via electronic mail*  
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RE: OMA Request for Review – 2017 PAC 49551

Dear Ms. Wilson, President Horcher, and Ms. Milluzzi:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). As explained below, the Public Access Bureau recommends that the Board of Trustees (Board) of the Village of Wheeling (Village) review portions of its rules and procedures concerning public comment at meetings.

**BACKGROUND**

On September 7, 2017, Ms. Deborah Wilson submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA during its September 5, 2017, meeting by enforcing restrictions on public comment that are not written in the municipal code. Specifically, Ms. Wilson alleged that she attempted to comment about two specific trustees and

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her claim that they were improperly operating home-based businesses but was interrupted by the Village President, Mr. Patrick Horcher, who informed her that comments should be addressed to the Board as a whole and that she could not engage in personal attacks against individual members. She contended that the purpose of her comments was to hold the trustees accountable in their enforcement of the Village's residential zoning ordinance and dealings with home-based businesses. Ms. Wilson also asserted that she was unaware of any Village rules that required her to address comments to the Board as a whole or that prohibited personal attacks.

On September 18, 2017, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the Board's established and recorded rules governing public comment, together with a written response to Ms. Wilson's OMA allegations. This office also asked the Board for a copy of the meeting agenda, open session minutes, and any verbatim recordings of the meeting. On September 27, 2017, this office received a written response with links to copies of the meeting agenda, the Village Code, and video recordings of past Board meetings, including the meeting at issue. This office also received a copy of the draft meeting minutes for this office's confidential review. On October 3, 2017, this office forwarded a copy of the Board's response to Ms. Wilson; she replied that same day, requesting from the Village a copy of "Robert's Rules of Order" as referenced in the Board's response.

### **DETERMINATION**

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4 ("The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules."). Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, a public body generally may promulgate reasonable "time, place and manner"

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rules aimed at preserving order and decorum and ensuring that meetings can be conducted efficiently. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 5.

Notwithstanding the legitimate interest in establishing rules governing order and decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based must be narrowly drawn to serve compelling state interests. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). As the Ninth Circuit has explained:

An ordinance that governs the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting: However, actually disturbing or impeding a meeting means actual disruption of the meeting; a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance. (Internal citations and ellipses omitted.) (Emphasis in original.) *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).

In *Acosta*, the court struck down as overbroad a city ordinance that provided for the removal of "any person who commits disorderly, insolent, or disruptive behavior, including \* \* \* personal, impertinent, profane, insolent, or slanderous remarks." *Acosta*, 718 F.3d at 811. The court held that the ordinance was unconstitutional because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. *Acosta*, 718 F.3d at 813.

In its response to this office, the Board asserted that it had restricted Ms. Wilson's comments in accordance with sections 2.03.060(a), 2.03.180(d), and 2.03.210 of the Municipal Code of Wheeling (Code).<sup>1</sup> Section 2.03.060(a) of the Code provides:

- (a) Citizen Concerns and Comments at Village Board Meetings. ***Members of the general public may address the board with concerns or comments regarding issues relevant to village business. Issues relevant to village business are defined to mean information about village events; issues that the public body has the authority to address; items listed***

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<sup>1</sup>Wheeling, Ill. Municipal Code, ch. 2.03 §§ 060(a), 180(d), 210A (2018), available at [https://library.municode.com/il/wheeling/codes/code\\_of\\_ordinances?nodeId=WHMUCO](https://library.municode.com/il/wheeling/codes/code_of_ordinances?nodeId=WHMUCO).

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*on the agenda; and items or issues previously voted on by the village board or that the village board has the authority to consider or vote on in the future.* The village president or his designee shall strictly restrain comments to matters that are relevant to village business and ***shall not permit repetitious comments or arguments.*** Members of the general public who wish to address the board must sign the request to speak form prior to the commencement of the public meeting. The persons submitting a petition, concern or other comment shall be allotted five minutes to present their points. The manager or corporate authorities may respond for the village. (Emphasis added.)

Section 2.03.180(d) of the Code further provides:

- (d) The president shall maintain order and decorum at all times during official meetings of the corporate authorities. The president shall call to order any trustee who transgresses these rules, and shall admonish all other persons who do not abide by these rules or the village ordinances. The president shall eject from the meeting any person other than a village officer who interferes with the orderly conduct of the meeting or who persists in disorderly, disruptive conduct and may call on any officer of the police department for assistance.

In addition, section 2.03.210 of the Code provides that "[t]he rules of order of the corporate authorities of the village of Wheeling shall consist of the provisions of this chapter and, except where inconsistent or in conflict with this chapter or with Illinois law, the provisions of the new revised Robert's Rules of Order to the extent otherwise applicable." In connection with this provision, the Village cited to Robert's Rule of Order No. 7, highlighting, in pertinent part:

Speakers must address their remarks to the presiding officer, be courteous in their language and deportment, and avoid all personalities, never alluding to the officers or other members by name, where possible to avoid it, nor to the motives of members.  
\* \* \* Debate must address issues not personalities and that no one

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is permitted to make personal attacks or question the motives of other speakers.

In its response to this office, the Board asserted that "the Village's rules and regulations are content and viewpoint neutral and serve the significant government interest of maintaining civility and decorum. Speakers are only subject to restriction when their speech disrupts, disturbs, or otherwise impedes the orderly conduct of the Village Board meeting."<sup>2</sup> The Board contended that the "[r]estrictions imposed on Ms. Wilson and other speakers derive from a perfectly sustainable and content-neutral desire to prevent badgering, constant interruptions, and disregard for the rules of decorum."<sup>3</sup> (Emphasis omitted.)

This office has reviewed the video recording of the public comment portion of the Board's September 5, 2017, meeting.<sup>4</sup> Ms. Wilson walked up to the podium and began by asking Trustee Mary Krueger, for her support in dropping actions against certain businesses. The Village Manager, Jon Sfondilis, began to respond to Ms. Wilson when she stopped him and stated that she was talking to Trustee Krueger. President Horcher then stepped in and informed Ms. Wilson that her comments needed be addressed to the Board as a whole on matters of Village business. Ms. Wilson asked again the same question to Trustee Krueger. President Horcher asked Ms. Wilson if she understood what he had said. Ms. Wilson did not respond and proceeded to speak about a certain alleged business and its connection to Trustee Krueger. President Horcher asked her once more if she understood what he had explained. Ms. Wilson did not respond and continued speaking about the alleged business. President Horcher again informed Ms. Wilson that her comments had to pertain to the Village business at hand. Ms. Wilson responded that her comments pertained to Village business and continued to speak about the alleged business and the Village's enforcement of its zoning ordinance. She then referenced Trustee Krueger and Trustee Ray Lang, at which point President Horcher attempted to intervene. After a few attempts at speaking to her, President Horcher informed Ms. Wilson that personal attacks were not needed and to follow the rules. Ms. Wilson disputed the characterization of her comments as personal attacks and made a comment about him "switching sides." President Horcher responded: "I need you to stick to the rules, or to sit down." Ms. Wilson resumed commenting about the home business

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<sup>2</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>3</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>4</sup>Village of Wheeling, Board Meeting Video 9-5-2017 (September 5, 2017), <http://www.wheelingil.gov/657/Board-Meeting-Video-9-5-2017> (last visited March 21, 2018), 15:57.

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ordinance until she made another allegation against Trustee Lang, and President Horcher again attempted to interject. Ms. Wilson continued speaking until a Board member appeared to call out to President Horcher. President Horcher stopped Ms. Wilson and told her she was done and that her time was up. Ms. Wilson resumed speaking against President Horcher's protestations; he asked for an officer to escort her out, and the five-minute bell rang as the officer walked up to her. Ms. Wilson finished her comments and exited.

In explaining the restrictions it imposed on Ms. Wilson's comments during its September 5, 2017, meeting, the Board contended that Ms. Wilson attempted to debate or argue with a specific trustee rather than address the Board as a whole. The Board asserted that "Ms. Wilson started off her public comment with demanding an answer from a specific Trustee."<sup>5</sup> The Board contended that "[t]his initial exchange was disruptive and a violation of the Village Code, as she demanded an answer from a Trustee, interrupted and argued with the Village Manager and ignored the direction of the Village President to badger a Trustee."<sup>6</sup> The Board further stated that Ms. Wilson had been permitted to speak about the issue of home-based business on other occasions, including at its August 21, 2017, meeting. The Board asserted that it "had already made a decision about home based businesses[.]" and consequently, Ms. Wilson's comments were "repetitive and argumentative."<sup>7</sup> Additionally, the Board contended that Ms. Wilson was not prohibited from making comments about individual trustees, but that "she cannot make personal, slanderous remarks about individuals that are not relevant to their performance or qualifications as village officials."<sup>8</sup> The Board also argued that Ms. Wilson's tone and behavior were disruptive, asserting that she "continually raised her voice and spoke over the Village Manager and the Village President" and made certain comments that were disruptive.<sup>9</sup>

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<sup>5</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>6</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>7</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>8</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

<sup>9</sup>Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

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In this case, the video recording shows that Manager Sfondilis' interruption of Ms. Wilson at the beginning of her public comment was in response to a question she repeatedly posed to Trustee Krueger. The Board clarified that Manager Sfondilis was attempting to explain to Ms. Wilson that questions would not be answered during the public comments session. This office's review of section 2.03.060(a) of the Code confirmed that the Village Manager may respond on behalf of the Village. As the Board acknowledged, nothing in OMA prevents a member of the public from asking public officials questions. However, OMA does not require a public official to respond to questions or comments that are directed to him or her. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2.* Because OMA does not require public officials to respond to questions, and because the Village's established and recorded rules permit the Village Manager to respond on behalf of the Board, this office concludes that Manager Sfondilis did not improperly interrupt Ms. Wilson at the beginning of her comments, and Trustee Krueger was not required to respond to questions.

On the other hand, with respect to the Board's interruptions of Ms. Wilson's comments when she directed remarks towards or made claims about specific Trustees, the Board did not demonstrate that its restrictions were reasonably necessary to maintain order, decorum, or efficiency. Encompassed within the right to comment is the right of members of the public to address specific public officials, albeit OMA does not require that those public officials to respond to the comments. In this case, the Board was not required to respond to Ms. Wilson's comments or debate with her in response to her allegations. However, this office is unable to conclude from its review of the recording that Ms. Wilson's comments were clearly creating a disturbance. Although Ms. Wilson spoke in a raised voice at times, she did not make threats, use profanity, or otherwise engage in conduct that disrupted the meeting.

To the extent that criticizing a public official by name could be considered a "personal attack" that disrupted the meeting, this office has previously reviewed a public body's decision to prohibit a speaker from completing his public comments based on a rule that prohibited "personal attacks against others" or "rude or slanderous remarks." *Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3.* In that matter, this office emphasized: "[W]hether a remark constitutes a 'personal attack' is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." *Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3.* Because the speaker's attempt to comment at the meeting did not appear to create a disturbance or interfere with the efficiency of the proceedings, this office concluded that the

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public body improperly prohibited him from completing his comments. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 4.

Likewise, this office is unable to conclude that Ms. Wilson's use of the two Trustees' names disrupted, or imminently threatened to disrupt, the meeting at issue. Her comments were critical of two trustees and appeared to allege that actions in their personal lives were inconsistent with their public position on a zoning issue. Although those comments were directed at the Board members personally, they concerned the issue of the Board's enforcement of the Village zoning ordinance. Accordingly, this matter is distinguishable from the Federal District Court case the Board argued is similar. *Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1373 (D. Kan. 1998) (city council did not violate first amendment to the United States Constitution by restricting personal comments about an appointee to a mayoral commission that were not directly relevant to the business of the public body).

Additionally, this office has reviewed section 2.03.060(a) of the Code and notes that it does not prohibit a member of the public from asking the Board to reconsider a decision previously made. Section 2.03.060(a) of the Code defines "village business" as including "information about village events; *issues that the public body has the authority to address*; items listed on the agenda; and *items or issues previously voted on by the village board* or that the village board has the authority to consider or vote on in the future." (Emphasis added.) Under that broad definition, comments pertaining to the Board's enforcement of a zoning ordinance appear to fall within the meaning of "village business," even if the Board has previously voted on the matter. In any event, the recording of the meeting indicates that the Board's restrictions of Ms. Wilson's comments were directed towards her references to particular trustees in connection with public business of the Board, rather than repetitiousness.

The Board also highlighted Ms. Wilson's conduct at previous meetings, including the Board's August 21, 2017, meeting. This office has reviewed the recording of the Board's August 21, 2017, meeting and recognizes the Board's concerns about the animated manner in which Ms. Wilson appeared to address the Board about the alleged businesses at issue. A public body's attempts to preserve decorum may not be unreasonable in those instances in which a member of the public engages in demonstrative actions and conduct that threatens disruption or becomes disruptive to the meeting. *See Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 387 (4th Cir. 2008) ("[D]isruption may take the form of \* \* \* speaking in a tone or manner that threatens disruption."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 46149, issued April 10, 2018, at 5 (concluding that an individual's animated conduct, which included moving around the meeting room, continued raising of his voice, and repeated thrusting of his finger in the direction of the Board "disrupted the decorum of the meeting to the extent that the Board's



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interruption of his public comment was not unreasonable." ). In this case, however, Ms. Wilson did not appear to engage in the same type of belligerent or potentially threatening conduct. While Ms. Wilson commented again on the alleged businesses at the September 5, 2017, meeting, she wrapped up her comments when the bell for the 5-minute limit rang; her comments did not further hold up the meeting. Under these limited circumstances, this office cannot conclude that Ms. Wilson's naming of the specific Trustees disturbed the decorum of the meeting. Accordingly, this office concludes that the Board improperly restricted portions of Ms. Wilson's public comments during its September 5, 2017, meeting.

In accordance with the conclusions expressed in this determination, this office requests that the Board permit members of the public to address and raise concerns regarding the conduct of individual Board members which relates to public business at future meetings, notwithstanding that individual Board members are not required to respond to comments. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

  


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Assistant Attorney General  
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